

Request for Reconsideration After Final
Serial No. 10/083,533
Attorney Docket No. 020244

REMARKS

Claims 1-5, 7-12, 14 and 15 were rejected under 35 U.S.C. §102(e) as being anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over **Patelmo**. This rejection is respectfully traversed.

The Examiner notes on page 3 of the Office Action that process limitations do not carry weight in a claim drawn to a structure. However, the Examiner has misconstrued some of the limitations in the claims as process limitations, and as a result, has improperly dismissed these limitations.

As one example, the Examiner apparently considers the limitation “wherein the bird’s beak structure is formed from the same thermal oxide film as the protective insulating film” as a process limitation. This limitation, however, structurally distinguishes the invention from **Patelmo**. In detail, the Examiner considers the interpoly dielectric layer 31 having ONO structure as corresponding to the claimed protective insulating film. This ONO structure cannot function or be considered as a bird’s beak structure. Thus, for at least this reason, the claimed structure is not anticipated by **Patelmo** and could not be considered obvious since **Patelmo** contains no teaching or suggestion of a structure “wherein the bird’s beak structure is formed from the same thermal oxide film as the protective insulating film.”

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Claims 8 and 15 were rejected under 35 U.S.C. §103(a) as being unpatentable over **Patelmo** in view of applicant admitted prior art, and claims 6 and 13 are rejected under 35 U.S.C. §103(a) as being unpatentable over **Patelmo** in view of **Prall et al.** The secondary references applied by the Examiner fail to provide the teachings which **Patelmo** lacks as discussed above. Therefore, these rejections should also be withdrawn.

For at least the forgoing reasons, the claimed invention distinguishes over the cited art and finds patentable subject matter. Favorable reconsideration is honestly solicited.

Should the Examiner deem the any further action by Applicants would be desirable to place the application in condition for allowance, the Examiner is encouraged to telephone Applicants' undersigned attorney.

If this paper is not timely filed, Applicants respectfully petition for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,

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